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Attorneys for Plaintiffs,  
BMG MUSIC; SONY BMG MUSIC  
ENTERTAINMENT; WARNER BROS.  
RECORDS INC.; INTERSCOPE RECORDS;  
ELEKTRA ENTERTAINMENT GROUP INC.;  
MOTOWN RECORD COMPANY, L.P.; LAFACE  
RECORDS LLC; FONOVIDA, INC.; and UMG  
RECORDINGS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

\*E-Filed 3/19/08\*

BMG MUSIC, a New York general partnership; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; WARNER BROS. RECORDS INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; LAFACE RECORDS LLC, a Delaware limited liability company; FONOVIDA, INC., a California corporation; and UMG RECORDINGS, INC., a Delaware corporation,

CASE NO. 5:07-CV-06034-RMW

## **Honorable Ronald M. Whyte**

**EX PARTE APPLICATION TO CONTINUE  
CASE MANAGEMENT CONFERENCE  
AND EXTEND TIME TO SERVE  
DEFENDANT AND [ ] ORDER**

#### **Plaintiffs.**

V.

**JOHN DOE,**  
Defendant.

1 Plaintiffs respectfully request that the Court continue the case management conference  
2 currently set for March 28, 2008, at 10:30 a.m. to July 25, 2008. Plaintiffs further request, pursuant  
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an  
4 additional 90 days – until June 26, 2008 – to serve Defendant with the Summons and Complaint. As  
5 further explained below, Plaintiffs have not yet discovered the identity of the Doe defendant in this  
6 case, and cannot move this case forward until they do so. In support of their request, Plaintiffs state  
7 as follows:

8 1. The initial case management conference is set for March 28, 2008. The current  
9 deadline for service of process is March 28, 2008. No previous continuances or extensions have  
10 been requested or granted in this case.

11 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John  
12 Doe on November 29, 2007. Plaintiffs did not have sufficient identifying information to name  
13 Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol address  
14 assigned to Defendant by Defendant's Internet Service Provider ("ISP") – in this case, the University  
15 of California-Berkeley. In order to determine the true name and identity of the Doe defendant,  
16 Plaintiffs filed their *Ex Parte* Application for Leave to Take Immediate Discovery on November 29,  
17 2007, requesting that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the  
18 ISP.

19 3. The Court has not yet ruled on Plaintiffs' *Ex Parte* Application for Leave to Take  
20 Immediate Discovery. Accordingly, Plaintiffs have been unable to serve a subpoena on the ISP to  
21 obtain the identity of the Doe defendant.

22 4. If the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take Immediate  
23 Discovery, Plaintiffs will promptly serve a Rule 45 subpoena on the ISP seeking information  
24 sufficient to identify Defendant. If Plaintiffs discover Defendant's identity, Plaintiffs intend to  
25 contact Defendant and attempt to resolve the dispute. If the dispute cannot be resolved, Plaintiffs  
26 intend to file a First Amended Complaint naming Defendant personally, and then proceed to serve  
27 process upon him or her. However, until Plaintiffs discover Defendant's identity, they are unable to  
28

initiate settlement discussions, name him or her personally in this action, or serve him or her with process.

5. Given the circumstances of this case, Plaintiffs respectfully request that the case management conference be continued to July 25, 2008, or such other date as conveniences the Court. Plaintiffs further request an additional 90 days – until June 26, 2008 – to effectuate service.

6. Plaintiffs' submit that the filing of their *Ex Parte* Application for Leave to Take Immediate Discovery demonstrates "good cause" under Rule 4(m) for an extension of time for service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions). Unlike a traditional case in which the defendant is known by name and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first must obtain the identity of the defendant through the subpoena to the ISP, a process which is not yet complete. This Court has discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

7. Because the copyright infringements here occurred in 2007, the three-year limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no prejudice to the Defendant from any delay in serving the Complaint.

8. Plaintiffs will provide the Defendant with a copy of this request and any Order concerning this request when service of process occurs.

Dated: March 17, 2008

## HOLME ROBERTS & OWEN LLP

By: /s/ Matthew Franklin Jaksa  
MATTHEW FRANKLIN JAKSA  
Attorney for Plaintiffs  
BMG MUSIC; SONY BMG MUSIC  
ENTERTAINMENT; WARNER BROS.  
RECORDS INC.; INTERSCOPE  
RECORDS; ELEKTRA  
ENTERTAINMENT GROUP INC.;  
MOTOWN RECORD COMPANY, L.P.;  
LAFACE RECORDS LLC; FONOVIDA,  
INC.; and UMG RECORDINGS, INC.

1                   **[ ] ORDER**

2                   Good cause having been shown:

3                   **IT IS ORDERED**, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1),  
4                   that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26,  
5                   2008.

6                   **IT IS FURTHER ORDERED** that the case management conference currently set for March  
7                   28, 2008, at 10:30 a.m. be continued to July 25, 2008 before the undersigned.

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10 Dated: \_\_\_\_\_3/19/08\_\_\_\_\_

11 By: Ronald M. Whyte  
Honorable Ronald M. Whyte  
United States District Judge

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